Rules and Regulations

Federal Register
Vol. 55, No. 145
Friday, July 27, 1990

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items. It reduces requirements for use of certified or registered mail to what is necessary. It also provides that documents and papers served by ordinary mail on a party other than the Secretary will be deemed to be served at the time of mailing. It also extends times for filing certain documents and papers since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond.

EFFECTIVE DATE: July 27, 1990, except that these amendments shall not apply to any document or paper to be filed, for which a filing date has been set by order of a Judge prior to such effective date, or for which a filing date has been specified in a written notice issued prior to such effective date and served, in a proceeding pending on such effective date.

FOR FURTHER INFORMATION CONTACT: John J. Casey, Office of the General Counsel, 2446 South Building, USDA, Washington, DC 20250-1400, 202/447-7357.

SUPPLEMENTARY INFORMATION: This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items.

Requirements for use of certified or registered mail currently apply to all documents or papers served in such proceedings; such requirements are now being limited to a few such items:

1. A complaint or other document initially served on a person to make that person a party respondent in a proceeding;

2. A proposed decision and motion for adoption thereof upon failure to file an answer or admission of all material allegations of fact contained in a complaint;

3. A recommended final order;

4. A final order;

5. An appeal petition filed by the Department; and

6. Any other document specifically ordered by the Judge to be served by certified mail.

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served on a party other than the Secretary at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond. No change is made in the method of filing, or service on the Secretary or agent thereof, and service of such documents will be considered made when the documents are received by the Hearing Clerk.

Recent decisions supporting the changed method of service are *Atkins* v. *Parker*, 472 U.S. 115 (1985); *U.S. Fire Ins. Co.* v. *Producciones Padosa, Inc.*, 835 F.2d 950 (1st Cir. 1987); *Old Ben Coal Co.* v. *Luker*, 826 F.2d 688 (7th Cir. 1987); and *U.S.* v. *Bolton*, 781 F.2d 528 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158 (1986).

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

Executive Order 12291 and Regulatory Flexibility Act

This final rule is exempt from Executive Order 12291 since it relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings. Also, this action is exempt from the provisions of the Regulatory Flexibility Act since it is not a rule as defined by that Act.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this final rule since it does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes.

List of Subjects in 7 CFR Part 1

Agriculture, Administrative practice and procedure.

Accordingly, 7 CFR part 1, subpart H, is amended as set forth below.

PART 1—[AMENDED]

1. The authority citation for 7 CFR part 1, subpart H continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740, unless otherwise noted.

2. Section 1.132 is amended by adding new paragraphs (j) and (k) to read as follows:

§ 1.132 Definitions.

* * * * *

(j) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(k) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

§ 1.143 [Amended]

3. Section 1.143(d) is amended by removing the number "10" and inserting in lieu thereof the number "20."

4. Section 1.147 is amended by revising paragraph (b), by redesignating existing paragraphs (c), (d) and (e) as (f),

(g) and (h), respectively, and by adding new paragraphs (c), (d), and (e), to read as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

* * * * *

(b) *Who shall make service.* Copies of all such documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or deputy marshal.

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that,* if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (c)(1) of this section or written questions for a deposition as provided in § 1.148(d)(2) of this part, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Service on another.* Any subpoena, written questions for a deposition under § 1.148(d)(2) of this part, or other document or paper, served on any person other than a party to a proceeding, the Secretary or agent thereof, shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(e) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided* that such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State or political subdivision thereof.

* * * * *

5. The second sentence of 1.148(d)(2) is revised to read as follows:

§ 1.148 Depositions.

* * * * *

(d) *Procedure on examination.* * * *

(2) * * * If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination. * * *

* * * * *

6. Section 1.149 is amended by revising the last sentence of paragraph (a), and all of paragraph (b), to read as follows:

§ 1.149 Subpoenas.[4]

(a) *Issuance of subpoenas.* * * * Except for good cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147 of this part.

Done at Washington, DC this 23rd day of July 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-17511 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-14-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, 236, 242, and 253

[Atty. Gen. Order No. 1435-90]

Aliens and Nationality; Asylum and Withholding of Deportation Procedures

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures to be used in determining asylum under section 208 and withholding of deportation under section 243(h) of the Immigration and

[4] This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.

Nationality Act, as amended by the Refugee Act of 1980. The rule adopts with minor changes the revised proposed rule published on April 6, 1988 (53 FR 11300) which substantially modified an earlier proposed rule published on August 28, 1987 (52 FR 32552) and the interim rule published on June 2, 1980 (45 FR 37392). That modification responded to numerous and diverse comments received on the August 28, 1987 proposed rule, in particular a substantial number objecting to the original proposal to require that all asylum and withholding of deportation claims be adjudicated in a nonadversarial setting by Asylum Officers within the INS. The final rule provides for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. At the same time, it preserves an opportunity, prior to the institution of proceedings, for adjudication of initial applications in a nonadversarial setting by a specially-trained corps of Asylum Officers.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Henry L. Curry, Director, Asylum Policy and Review Unit, Department of Justice, 10th and Constitution Ave., NW., room 6213, Washington, DC 20530. Telephone: (202) 514–2415; or

Ralph Thomas, Deputy Assistant Commissioner, Refugees, Asylum, and Parole, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 514–2361; or

Gerald Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5107 Leesburg Pike, suite 2800, Falls Church, Virginia 22041. Telephone: (703) 756–6470.

SUPPLEMENTARY INFORMATION:

I. Background

The Refugee Act of 1980 created a statutory basis for asylum in the United States and made withholding of deportation for those who qualify mandatory rather than discretionary. In passing the Act, Congress for the first time established a statutory definition of refugee based on the definition the United States accepted upon becoming a party to the 1967 Protocol to the UN Convention Relating to the Status of Refugees. It also established a regular procedure for the admission for refugees to the United States, thus largely eliminating the need to use the Attorney General's parole authority for this purpose, and required the Attorney General to establish a procedure through which aliens already in the United States could apply for asylum on the basis of refugee status.

Consistent with the UN refugee definition, under the Act a refugee is, in essence, someone who has been persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Someone who meets the refugee definition and who has not been firmly resettled elsewhere is eligible for a discretionary grant of asylum, unless one of several specific exclusionary provisions applies (e.g., the applicant has been convicted of a serious non-political crime). The Attorney General is vested with the discretionary authority to grant or deny asylum to refugees physically present in the United States or at a land border or port of entry, irrespective of status.

Similarly, the Act specifically recognizes the obligation under the Convention and Protocol not to expel or return—*refouler*—those whose life or freedom would be threatened upon return to a country of claimed persecution except under strictly limited circumstances. Withholding of deportation is required by the statute for those who are clearly at such risk, unless the individual falls within a limited number of exclusion classes. Entitlement to withholding of deportation thus requires a showing that the life or freedom of the applicant would be threatened in the country of proposed deportation on account of race, religion, nationality, membership in a particular social group, or political opinion.

However, Congress did not legislate any particular method by which claims for asylum or withholding of deportation were to be adjudicated, directing instead that the Attorney General establish the necessary procedures for such adjudication. Interim regulations establishing procedures and standards governing applications under the provisions of the Refugee Act of 1980 were published on June 2, 1980. These interim regulations (hereafter referred to as the "1980 interim rule") were intended only to provide a temporary regulatory mechanism for adjudicating claims pending publication of permanent procedures following a period of deliberate study and analysis. After an appropriate period of experience under the interim rule, the Department of Justice ("the Department"), including the Immigration and Naturalization Service ("INS") and the Executive Office for Immigration Review ("EOIR"), the Department of State, and other concerned administrative agencies of the United States Government conducted detailed reviews and discussions of the asylum process in order to formulate and implement a comprehensive and uniform asylum policy and procedure. Designed within the legislative framework established by the Refugee Act, that policy reflects two basic guiding principles: A fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process; and a recognition of the essential need for an orderly and fair system for the adjudication of asylum claims.

The internal policy and regulatory process itself consumed more than two years of effort, culminating with the Attorney General's creation of an Asylum Policy and Review Unit within the Office of Policy Development in the Department of Justice and the subsequent publication of a proposed rule on August 28, 1987 (hereafter referred to as the "August 28, 1987 rule"). Following a 60-day period of intense public debate and comment, the Department announced on December 12, 1987 (52 FR 46776) that it intended to modify that rule in order to provide for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. That major substantive modification as well as other procedural modifications necessitated by that change were reflected in a revised proposed rule published on April 6, 1988 (hereafter referred to as the "April 6, 1988 revised proposed rule") which was opened for an additional 30-day public comment period. This final rule adopts with minor changes the April 6, 1988 revised proposed rule. The "Supplementary Information" section accompanying the April 6, 1988 revised proposed rule provides a complete discussion of the major substantive and other procedural modifications.

The following provides a section-by-section analysis of the regulatory provisions contained in this final rule, including a discussion of relevant comments received in the 30-day comment period following the April 6, 1988, revised proposed rule. In addition to the questions of jurisdiction discussed above, the following analysis responds to comments on the proposed rule, but retains the procedures as were proposed regarding the revocation of asylum or withholding of deportation (§ 208.24), and adopts a new § 208.7 ensuring employment authorization for aliens

pursuing asylum claims in "good faith." This responds to concerns by commenters that aliens could lose such authorization during a period between the Asylum Officer's denial of an asylum claim and the alien's ability to renew the claim before an Immigration Judge. (It should be noted that many of the changes which have been made in the final rule are purely technical in nature, *e.g.*, the "Office of Policy Development" has been substituted for the "Office of Legal Policy." Such changes are not specifically noted in the following analysis.)

II. Analysis and Discussion of Comments

(1) *8 CFR 208.1—General.* The final rule creates the position of Asylum Officer within the Office of Refugees, Asylum, and Parole ("CORAP") in INS; requires that such officers receive specialized training in the relevant fields of international relations and international law under the co-direction of the Assistant Commissioner, CORAP, and the Director of the Asylum Policy and Review Unit of the Department of Justice ("APRU"); and reflects the role of the Deputy Attorney General and APRU in providing those officers with current information as an ongoing component of their training. In addition, under § 208.1, the new standards and procedures established in the final rule will apply only to applications for asylum or withholding of deportation filed on or after the date the rule becomes effective, unless a motion to reopen or reconsider under the new rule is granted. In addition, it is provided that a documentation center shall be maintained for the collection and dissemination of information on human rights conditions. The creation of a documentation center is an addition to the rule. It was felt that this would be a very positive development in aiding Asylum Officers to maintain current knowledge of country conditions around the world. It also reflects recent developments in the methods used to aid in the adjudication of asylum cases in other countries, such as Canada.

Many comments on the previously published rules have raised the objection that the adjudication of asylum cases will remain within INS, since the Service is also responsible for enforcement functions. This regulation creates an asylum adjudications function which is separate from INS enforcement functions. The Asylum Officers will be directed and supervised by CORAP and will deal only with asylum cases.

(2) *8 CFR 208.2—Jurisdiction.* Under the final rule, affirmative applications for asylum or withholding of deportation are to be referred in the first instance to an Asylum Officer and adjudicated in a nonadversarial setting. At the same time, the final rule provides for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. Paragraph (b) provides that the "Immigration Judge shall make a determination on such claims *de novo* regardless of whether or not a previous application was filed and adjudicated by an Asylum Officer prior to the initiation of exclusion or deportation proceedings." Thus the final rule maintains a system of adjudication parallel to that established in the 1980 interim rule with the exception that Asylum Officers reporting directly to CORAP will now assume the jurisdiction formerly exercised by District Directors.

(3) *8 CFR 208.3—Form of application.* This section of the final rule prescribes the proper form for applications for asylum and withholding of deportation and is self-explanatory. Several commenters objected to the current Form I–589. While this rule does not change the content of the Form, its revision is planned in the future.

(4) *8 CFR 208.4—Filing the application.* This section establishes the procedures and locations for filing initial applications. With respect to applications filed after the institution of exclusion or deportation proceedings, the final rule necessarily incorporates significant procedural modifications to the August 28, 1987 proposed rule, as published and explained in the April 6, 1988 revised proposed rule. This modification drew serious objection from practitioners during the public comment period, many expressing the concern that the requirements for motions to reopen proceedings in order to file an initial asylum application would cause difficulty to applicants who may not have known of their right to apply for asylum previously. They thus urged a return to the standard contemplated in the August 28, 1987 rule.

However, under the August 28, 1987 rule, Immigration Judges were to be removed from the asylum adjudication process. The final rule retains the jurisdiction of Immigration Judges existing under the 1980 interim rule, including the adjudication of asylum claims raised in the context of reopening deportation or exclusion proceedings based either on the filing of an initial application under § 208.4 of the final rule or on the request to reopen or reconsider a previously denied claim under § 208.19 of the final rule. In either instance, consistent with the requirements governing all proceedings, a formal motion to reopen, reconsider, or remand, as appropriate, is necessary.

Therefore, the revised rule incorporates, without substantive change, the requirements for the reopening of exclusion or deportation proceedings that existed under the 1980 interim rule and continue to exist elsewhere in title 8. In the asylum context they are considered necessary to deter late filings intended merely to delay deportation. The authority of the government to establish such requirements was upheld by the Supreme Court in *INS* v. *Abudu*, 485 U.S. 94 (1988).

(5) *8 CFR 208.5—Special duties toward aliens in custody of the service.* This section requires the Service to make asylum application forms avaiable to aliens in custody who request asylum, or express a fear of persecution, and provide, where available, a list of persons/groups who can assist the alien in preparing the application. Aliens detained under 8 CFR 235 or 242 are to be given expedited consideration where possible.

(6) *8 CFR 208.6—Disclosure to third parties.* This section is intended to protect the confidentiality of asylum and withholding of deportation applicants. Applications shall not be disclosed without the written consent of the individual, unless under the exceptions stated in this section. Exceptions are given to U.S. government officials or contractors with the need to know, any federal, state, or local court proceeding in the United States of which the application is a part, and any other official when the Attorney General deems it appropriate. Specific mention of the United Nations High Commission for Refugees ("UNHCR") is eliminated in this section. This is not meant to limit disclosure of information to UNHCR, or to increase the discretion of the Attorney General in revealing information. Rather it was felt that it is inappropriate to specify a non-governmental agency to which the Attorney General, after consultation with the Secretary of State, may reveal information.

(7) *8 CFR 208.7—Interim employment authorization.* This section mandates a grant of employment authorization for a period not to exceed one year for applicants who are not in detention and who file asylum applications which the Asylum Officer determines not to be frivolous. "Frivolous" is defined as "manifestly unfounded or abusive." The

applicant shall be able to renew his or her employment authorization in increments of up to one year, for the period of time necessary to complete administrative and judicial review of the applicant's asylum claim, so long as the applicant pursues the asylum claim through the appropriate administrative and judicial procedures.

Under this section, the alien's employment authorization will remain valid until the expiration of the alien's employment authorization document, or until sixty days after the Asylum Officer's decision denying asylum, whichever period is longer. Thus, the alien's employment authorization will continue for at least sixty days after the Asylum Officer's denial. A denial of asylum by the immigration judge or by the Board of Immigration Appeals ("BIA") will not terminate the alien's employment authorization. Rather, the employment authorization will continue in effect until the expiration of the alien's employment authorization document.

In order to obtain a renewal of employment authorization, the alien need only file a new Application for Employment Authorization (Form I–765) and show that the alien is pursuing the asylum claim through appropriate administrative or judicial review. In addition to the Form I–765, an alien who has been placed into deportation or exclusion proceedings after the Asylum Officer denied asylum need only present a copy of the Asylum Officer's denial of asylum and of the order to show cause or the notice to applicant for admission detained for hearing before an immigration judge placing the alien into proceedings. Thus, the alien will not have to wait until the Office of the Immigration Judge sets the case for hearing before applying for renewal of employment authorization. Whether the alien's claim is frivolous will not be addressed again in conjunction with an application for a renewal of employment authorization.

Nine commenters on the April 6, 1988, proposed regulations and five commenters on the August 23, 1987, proposed regulations identified the "gap" which can result from a delay between the Asylum Officer's denial of an asylum claim and the alien's ability to renew the claim before an immigration judge as a matter of serious concern. This "gap" can also result when the alien's employment authorization is not renewed in a timely fashion. New § 208.7 attempts to alleviate this problem in several ways. As noted above, new § 208.7 provides that the alien's employment authorization will continue for at least sixty days after the Asylum Officer's denial of the claim. The requirements for obtaining an extension are not burdensome. Any alien who is pursuing his claim in good faith should have no difficulty in meeting this requirement. Furthermore, new § 208.7(c) provides that employment authorization will be renewed before it expires, if the Service receives the application for renewal at least sixty days before the date on which the current employment authorization document will expire.

In some districts, high caseload or limited resources, or both, may prevent the Service from adjudicating applications for renewal of employment authorization in less than sixty days. Failure to submit an application for renewal of employment authorization at least sixty days before expiration of the current employment authorization will not be grounds to deny the renewal application. There may, however, be a gap between the expiration of the current employment authorization and the grant of a renewal, if the alien presents his renewal application less than sixty days in advance. An alien who files his application for renewal timely should not have this problem.

(8) *8 CFR 208.8—Limitations on travel outside the United States.* This section creates the presumption that an applicant (under advance parole) who returns to the country of claimed persecution has abandoned his asylum application, unless he can establish compelling reasons for assuming the risk of persecution by returning. Several comments expressed the belief that the presumption of abandonment of an application was unduly restrictive. While it remains the responsibility of the applicant to demonstrate a legitimate need to return to his country of claimed persecution, the term "extraordinary and urgent reasons," as used previously, has been changed to the less restrictive "compelling reasons."

(9) *8 CFR 208.9—Interview and procedure.* This section establishes the proper procedures for conducting an interview by an Asylum Officer. At the request of the applicant, the interview is to be conducted separate and apart from the general public. The applicant may have counsel or a representative and submit affidavits of witnesses. After the Asylum Officer administers the oaths, presents and receives evidence, and questions the applicant and any witnesses, the interview is completed. The applicant or representative shall then be allowed to make a statement or comment on the evidence, the length of which may be limited by the Asylum Officer, who may also require such a statement to be submitted in writing. The applicant may then be given up to 30 days to submit supporting evidence (longer if the Asylum Officer believes it necessary). The requirement, as stated in the April 6, 1988 revised rule, that the interview be conducted "out of hearing and view of" the general public has been modified to read "and, at the request of the applicant, separate and apart from" the general public. This change preserves the right to privacy of the applicant.

The asylum record shall consist of the application, all supporting material provided by the applicant, any comments by the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the State Department and the Asylum Policy and Review Unit (APRU) of the Justice Department, or by the INS, and any other information considered by the Asylum Officer.

(10) *8 CFR 208.10—Failure to appear.* This section provides that an unexcused failure to appear for a scheduled interview may be presumed to be an abandonment of the application.

(11) *8 CFR 208.11—Comments from the Bureau of Human Rights and Humanitarian Affairs.* This section allows BHRHA, at its option, to comment on applications received from INS. Such comment may include: Assessment of country conditions and experiences asserted, likely treatment of applicant, persecution of persons similarly situated to applicant, 208.14 grounds for denial, and other relevant information. BHRHA must respond within 45 days. Response may either be comments, request for additional time (another 30 days can be allowed), or declining to comment. If 60 days have elapsed, the Asylum Officer or Immigration Judge may decide the claim without the response.

Comments are to be made part of the asylum record; the applicant shall also be given a copy (unless it is classified) and the opportunity to respond to the comments, before an adverse decision is issued.

(12) *8 CFR 208.12—Reliance on information compiled by other sources.* This section provides that the Asylum Officer may rely on material provided by BHRHA, APRU, the Office of Refugees, Asylum, and Parole of INS, the District Director with jurisdiction over the applicant's residence/port of entry, and other credible sources, such as international organizations, private voluntary agencies, or academic institutions. If the Asylum Officer relies on such material for an adverse

decision, it must be shown to the applicant for inspection (unless it is classified) in order to explain or rebut it. However, this provision does not create an entitlement of discovery toward INS, Justice, or State records, officers, agents, or employees.

(13) *8 CFR 208.13—Establishing refugee status; burden of proof.* This section discusses the requirements for an alien to establish that he is a refugee. Section 101(a)(42) of the INA defines "refugee;" the burden of proof is on the applicant to establish that he meets this definition. If the applicant's testimony is credible in light of general conditions in the applicant's country, his testimony may be sufficient to sustain the burden of proof without corroboration. There are two methods of establishing oneself as a refugee: Actual past persecution and a well-founded fear of (future) persecution. Regarding past persecution, the applicant must first establish that persecution was actually suffered; the reason for such persecution must be one or more of the following: Race, religion, nationality, social group, or political opinion. The applicant also must be unwilling or unable to avail himself of that country's protection. If the applicant establishes past persecution, the burden is then on the government to show (by a preponderance of evidence) that conditions have changed so substantially that the applicant would not have a well-founded fear if he were to return. The applicant can then in turn assume the burden of demonstrating that he has compelling reasons not to return, owing to the severity of the persecution. This is consistent with the intent of the Act because it allows past persecution as grounds for establishing refugee status while at the same time recognizing that asylum can be denied on account of changed conditions.

For an applicant to be a refugee on the basis of a "well-founded fear" (as opposed to "past persecution"), he must establish that there is a fear based on race, religion, nationality, membership in a particular social group, or political opinion; that there is a reasonable possibility of suffering such persecution; that he is unable or unwilling to seek the protection of that country because of such fear. It is not necessary to prove he would be singled out if he can establish that there is a pattern or practice of persecuting the group of persons similarly situated, and that he can establish inclusion in/identification with such group. The Asylum Officer or Immigration Judge must also take into account whether applicant's country persecutes those persons who leave without permission or seek asylum elsewhere. Persons who have persecuted others shall not qualify as refugees.

(14) *8 CFR 208.14—Approval or denial of application.* This section sets forth the grounds for mandatory denial. Asylum shall be denied if the alien has been convicted in the U.S. of a particularly serious crime (and thus constitutes a danger to the community), has been firmly resettled, or is a danger to the security of the U.S. The alien has the burden of proving that such grounds do not apply. Many comments were received objecting to any mandatory denials. The Department believes, however, that there should be grounds for mandatory denials. This issue was discussed extensively in the "Supplementary Information" section of the April 6, 1988 revised rule.

(15) *8 CFR 208.15—Definition of "firm resettlement".* This section states that a person who enters another nation and receives before entry or therein an offer of permanent residence, citizenship, or other permanent resettlement is deemed "firmly resettled", with two exceptions. The first is that his entry into that country was a necessary consequence of flight, that he remained there only long enough to arrange onward travel, and did not establish significant ties. The second is that his conditions of residence were substantially restricted; the Asylum Officer or Immigration Judge shall examine factors such as housing and employment permitted, education, travel documentation, and other rights ordinarily available to other residents.

(16) *8 CFR 208.16—Entitlement to withholding of deportation.* This section deals with the requirements for proving eligibility for withholding of deportation. The applicant must show that his life or freedom would be threatened; testimony without corroboration may be sufficient. If the applicant has suffered past persecution, it shall be presumed he is eligible unless conditions have greatly changed. If the applicant can demonstrate that there is a pattern or practice of persecution of persons similarly situated to himself and can show his inclusion in that group, he need not demonstrate that he would be singled out. If a government threatens the life and freedom of persons who leave without authorization or seek asylum elsewhere, the Asylum Officer or Immigration Judge should give this due consideration. Pursuant to the requirements of the Act, withholding of deportation shall be denied if the applicant participated or assisted in the persecution of others, was convicted of a particularly serious crime, committed a serious non-political crime outside the U.S., or is a danger to the security of the U.S.

If an applicant is denied asylum in the exercise of discretion but granted withholding, thus precluding admission of following-to-join spouse or children, the asylum decision shall be reconsidered, as well as other reasonable alternatives for family reunification.

(17) *8 CFR 208.17—Decision.* This section requires that the Asylum Officer's decision be communicated in writing to the applicant, the District Director, the Assistant Commissioner of Refugees, Asylum, and Parole and the Director of APRU. Adverse decisions must state reasons for denial and assess the applicant's credibility.

(18) *8 CFR 208.18—Review of decisions and appeal.* This section grants review authority to the Assistant Commissioner of Refugees, Asylum, and Parole, and the Deputy Attorney General, assisted by APRU, to review decisions of Asylum Officers in designated cases. There is, however, no right of appeal to any of these offices, nor shall parties have any right to appear before these offices. An applicant may nonetheless renew an asylum or withholding application before an Immigration Judge in exclusion or deportation proceedings and, if such proceedings do not commence within 30 days of an Asylum Officer's denial, the applicant may request the District Director, in writing, that such proceedings commence, which shall be done promptly by the District Director absent exceptional circumstances.

(19) *8 CFR 208.19—Motion to reopen or reconsider.* This section states that a motion to reopen or reconsider, for proper cause, may be filed with the District Director or Office of Immigration Judge, whichever had jurisdiction for the prior determination.

(20) *8 CFR 208.20—Approval and employment authorization.* This section states that a grant of asylum is for an indefinite period. Employment authorization is automatically given or extended upon a grant of asylum. In the case of withholding, authorization is given unless the alien is detained pending removal to a third country. INS must give the alien documentation of his employment authorization.

(21) *8 CFR 208.21—Admission of asylee's spouse and children.* This section permits granting of asylum to the principal's spouse or child, unless they persecuted others, were convicted of a particularly serious crime in the U.S., or are, on reasonable grounds, a danger to the security of the U.S. If the spouse or

child in the U.S. was not included in the original application, or they are outside the U.S., the principal may request asylum for them by filing an I–730 with the District Director. The status shall be for an indefinite period, unless the principal's status is revoked. The burden of proof is on the alien to establish eligibility of the spouse or child; there is no appeal from a denial. By error, in the April 6, 1988 revised rule, the 'serious non-political crime outside the United States' section was included as a ground for mandatory denial. This was inadvertent, since such ground had been specifically removed for asylees. This error has been corrected.

(22) *8 CFR 208.22—Effect on deportation proceedings.* This section states that an alien granted asylum may not be excluded or deported unless his status is revoked. If his status is revoked, he shall be placed in exclusion or deportation proceedings.

(23) *8 CFR 208.23—Restoration of status.* This section states that an alien denied asylum or withholding who was maintaining nonimmigrant status at the time of his filing may continue or be restored to that status.

(24) *8 CFR 208.24—Revocation of asylum or withholding of deportation.* This section sets forth standards and procedures for revocations. Asylum or withholding may be revoked upon motion of the Assistant Commissioner for changed country conditions, fraud, or commission of an act which is grounds for denial under 208.14(c), after a hearing before an Asylum Officer. The alien shall be given 30 days notice before the hearing, and given the opportunity to present evidence; a decision to revoke shall be given the alien in writing. Revocation shall not preclude the alien from reasserting his claim in a deportation hearing. The Deputy Attorney General, assisted by APRU, shall have authority to review these revocations before they become effective; this does not, however, create a right of appeal to, or of appearance by parties before, the Deputy or APRU. An Immigration Judge or the BIA may re-open a case and revoke for the reasons stated above.

Some commenters raised the issue of a perceived lack of due process rights in the procedure of revocation by an Asylum Officer. However, the Department believes that those rights are adequately protected by the final rule. Current procedures under the interim rule give the power to revoke to the District Director in § 208.15, with only an opportunity to present written evidence; there is no hearing. An Asylum Officer hearing as detailed in this section of the final rule provides more rights to the alien than existing practice. Additionally, the Office of the Deputy Attorney General, assisted by APRU, has authority to conduct a neutral review, independent of INS. Finally, the applicant can reassert an asylum or withholding claim in any subsequent deportation hearing.

(25) *8 CFR 236.3—Applications for asylum or withholding of deportation.* This section deals with exclusion hearings in instances where the alien expresses fear of persecution or harm upon return. In such instances, the Immigration Judge shall advise the alien regarding asylum and withholding, and make the appropriate forms available. The Immigration Judge is to follow the requirements and standards set out in part 208, after an evidentiary hearing on material factual issues. If there is a mandatory denial pursuant to § 208.14 or § 208.16, such a hearing need not be held. The decision shall be communicated to the applicant and Trial Attorney for the Government; an adverse decision must state grounds for denial. Many comments objected to the provision stating that an evidentiary hearing is not necessary if there is a mandatory denial. This issue was discussed extensively in the "Supplementary Information" section of the April 6, 1988 revised rule. The Department continues to maintain, as stated at that time that:

> If it is apparent upon the record developed during a proceeding that the alien is clearly ineligible for asylum or withholding of deportation, the Immigration Judge will be permitted to forego a further evidentiary hearing on questions extraneous to the decision, thus avoiding unnecessary and time consuming factual hearings on nondispositive issues.

(26) *8 CFR 242.17—Ancillary matters, applications.* This section deals with deportation hearings in instances where the alien expresses fear of persecution or harm upon return. In such instances, the Immigration Judge shall advise the alien regarding asylum and withholding, and make the appropriate forms available. The Immigration Judge is to follow the requirements and standards set out in part 208, after an evidentiary hearing on material factual issues. If there is a mandatory denial pursuant to § 208.14 or § 208.16, such a hearing need not be held. The decision shall be communicated to the applicant and Trial Attorney for the Government; an adverse decision must state grounds for denial. As stated in section 25 above, the Department continues to believe that the provision stating that an evidentiary hearing is not necessary in instances where there is a mandatory denial, should remain in order to avoid unnecessary and time consuming factual hearings on nondispositive issues.

(27) *8 CFR 253.1—Parole.* This section deals with crewmen, stowaways, or those excluded under section 235(c), who allege persecution. Any of the above are eligible to apply for asylum or withholding. The alien must be given the appropriate application forms and given 10 days to file with the District Director having jurisdiction over the port of entry. Pending the decision, the alien shall be removed from the conveyance and may be either detained by INS, paroled into the custody of the ship's agent, or otherwise paroled in accordance with § 212.5; he shall not be excluded or deported before the Asylum Officer renders a decision on his application. Alien crewmen and stowaways denied asylum may appeal to the Board of Immigration Appeals.

The Department believes that promulgation of this final rule will facilitate the adjudication of claims for asylum and withholding of deportation in a manner consistent with the Refugee Act of 1980.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of E.O. 12291. The information collections in this rule have been approved under the Paperwork Reduction Act under OMB Control No. 1115–0086.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Asylum, Immigration, Jurisdiction, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens, Detention, Deportation.

8 CFR Part 253

Air carriers, Airmen, Aliens, Asylum, Crewmen, Maritime carriers, Parole, Reporting and recordkeeping requirements, Seamen.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2, Reorg. Plan No. 2 of 1950.

2. Section 3.1 is amended by adding paragraph (b)(9) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(9) Decisions of Asylum Officers of the Service on applications for asylum or withholding of deportation filed by alien crewman or stowaways, as provided in § 253.1(f)(4) of this chapter.

* * * * *

§ 3.22 [Amended]

3. Section 3.22 is amended by revising the second sentence of paragraph (b)(1) to read as follows: "Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22.".

PART 103—[AMENDED]

4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522(a); 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

5. Section 103.1 is amended as follows:

a. The third sentence of § 103.1(n)(1) is revised;

b. Section 103.1(q) is amended by adding the words "asylum officer" after the words "Legalization Assistant," and before the words "or senior or supervisory officer";

c. And by adding a new paragraph (v) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(n)(1) *District Directors.* * * * District directors are delegated the authority and responsibility to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and § 253.1(f) of this chapter, to initiate any authorized proceeding in their respective districts, and to exercise the authorities under §§ 242.1(a), 242.2(a) and 242.7 of this chapter without regard to geographical limitations. * * *

* * * * *

(v) *Asylum Officers.* Asylum officers serve under the general supervision and direction of the Assistant Commissioner for Refugees, Asylum and Parole, and shall be especially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate applications for asylum and for withholding of deportation, as provided under part 208 and § 253.1(f) of this chapter.

6. Part 208 is revised to read as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Sec.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1253, and 1283.

§ 208.1 General.

(a) This part shall apply to all applications for asylum or withholding of deportation that are filed on or after October 1, 1990. No application for asylum or withholding of deportation that has been filed with a District Director or Immigration Judge prior to October 1, 1990, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an Immigration Judge or an Asylum Officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.22 where applicable. The provisions of this part shall not affect the finality or validity of any decision made by District Directors, Immigration Judges, or the Board of Immigration Appeals in any asylum or withholding of deportation case prior to October 1, 1990.

(b) There shall be attached to the Office of Refugees, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall direct. These shall include a corps of professional Asylum Officers who are to receive special training in international relations and international law under the joint direction of the Assistant Commissioner, Office of Refugees, Asylum, and Parole and the Director of the Asylum Policy and Review Unit of the Office of Policy Development of the Department of Justice. The Assistant Commissioner shall be further responsible for general supervision and direction in the conduct of the asylum program, including evaluation of the performance of the employees attached to the Office.

(c) As an ongoing component of the training required by paragraph (b) of this section, the Assistant Commissioner, Office of Refugees, Asylum and Parole, shall assist the Deputy Attorney General and the Director of the Asylum Policy and Review Unit, in coordination with the Department of State, and in cooperation with other appropriate sources, to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

§ 208.2 Jurisdiction.

(a) Except as provided in paragraph (b) of this section, the Office of Refugees, Asylum, and Parole shall have initial jurisdiction over applications for asylum and withholding of deportation filed by an alien physically present in the United States or seeking admission at a port of entry. All such applications shall be decided in the first instance by Asylum Officers under this part.

(b) Immigration Judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served notice of referral to exclusion proceedings under part 236 of

this chapter, or served an order to show cause under part 242 of this chapter, after a copy of the charging document has been filed with the Office of the Immigration Judge. The Immigration Judge shall make a determination on such claims *de novo* regardless of whether or not a previous application was filed and adjudicated by an Asylum Officer prior to the initiation of exclusion or deportation proceedings. Any previously filed but unadjudicated asylum application must be resubmitted by the alien to the Immigration Judge.

§ 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made in quadruplicate on Form I-589 (Request for Asylum in the United States). The applicant's spouse and children as defined in section 101 of the Act may be included on the application if they are in the United States. An application shall be accompanied by one completed Form G–325A (Biographical Information) and one completed Form FD–258 (Fingerprint Card) for every individual included on the application who is fourteen years of age or older; additional supporting material may also accompany the application and, if so, must be provided in quadruplicate. Forms I–589, G–325A, and FD–258 shall be available from the Office of Refugees, Asylum, and Parole, each District Director, and the Offices of Immigration Judges.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.16, 236.3, and 242.17 of this chapter.

§ 208.4 Filing the application.

If no prior application for asylum or withholding of deportation has been filed, an applicant shall file any initial application according to the following procedures:

(a) *With the District Director.* Except as provided in paragraph (b) of this section, applications for asylum or withholding of deportation shall be filed with the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant seeks admission to the United States. The District Director shall immediately forward the application to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall notify the Asylum Policy and Review Unit of the Department of Justice and shall forward a copy of the completed application, including any supporting material subsequently received pursuant to § 208.9(e), to the Office of Refugees, Asylum and Parole and the Bureau of Human Rights and Humanitarian Affairs of the Department of State.

(b) *With the Immigration Judge.* Initial applications for asylum or withholding of deportation are to be filed with the Office of the Immigration Judge in the following circumstances (and shall be treated as provided in part 236 or 242 of this chapter):

(1) *During exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien pursuant to part 236 or 242 of this chapter, an initial application for asylum or withholding of deportation from that alien shall be filed thereafter with the Office of the Immigration Judge.

(2) *After completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been completed, an initial application for asylum or withholding of deportation shall be filed with the Office of the Immigration Judge having jurisdiction over the prior proceeding in conjunction with a motion to reopen pursuant to 8 CFR 3.8, 3.22 and 242.22 where applicable.

(3) *Pursuant to appeal to the Board of Immigration Appeals.* If jurisdiction over the proceedings is vested in the Board of Immigration Appeals under part 3 of this chapter, an initial application for asylum or withholding of deportation shall be filed with the Office of the Immigration Judge having jurisdiction over the prior proceeding in conjunction with a motion to remand or reopen pursuant to 8 CFR 3.2 and 3.8 where applicable.

(4) Any motion to reopen or remand accompanied by an initial application for asylum filed under paragraph (b) of this section must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding.

§ 208.5 Special duties toward aliens in custody of the Service.

(a) When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms for asylum and withholding of deportation and shall provide the applicant with a list, if available, of persons or private agencies that can assist in preparation of the application.

(b) Where possible, expedited consideration shall be given to applications of aliens detained under 8 CFR part 235 or 242. Except as provided in paragraph (c) of this section, such alien shall not be deported or excluded before a decision is rendered on his initial asylum or withholding of deportation application.

(c) A motion to reopen or an order to remand accompanied by an application for asylum or withholding of deportation pursuant to § 208.4(b) shall not stay execution of a final order of exclusion or deportation unless such a stay is specifically granted by the Board or the Immigration Judge having jurisdiction over the motion.

§ 208.6 Disclosure to third parties.

(a) An application for asylum or withholding of deportation shall not be disclosed, except as permitted by this section, or at the discretion of the Attorney General, without the written consent of the applicant. Names and other identifying details shall be deleted from copies of asylum or withholding of deportation decisions maintained in public reading rooms under § 103.9 of this chapter.

(b) The confidentiality of other records kept by the Service (including G–325A forms) that indicate that a specific alien has applied for asylum or withholding of deportation shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained when they are transmitted to State Department offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) Adjudication of asylum or withholding of deportation applications;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application;

(iii) The defense of any legal action of which the asylum or withholding of deportation application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application; or

(ii) Arising from the proceedings of which the asylum or withholding of deportation application is a part.

§ 208.7 Interim employment authorization.

(a) The Asylum Officer to whom an initial application for employment authorization (Form I–765) accompanying an application for asylum or withholding of deportation is referred shall authorize employment for a period

not to exceed one year to aliens who are not in detention and whose applications for asylum or withholding of deportation the Asylum Officer determines are not frivolous. "Frivolous" is defined as manifestly unfounded or abusive.

(b) Employment authorization shall be renewable, in increments not to exceed one year, for the continuous period of time necessary for the Asylum Officer or Immigration Judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

(1) If the asylum application is denied by the Asylum Officer, the employment authorization shall terminate at the expiration of the employment authorization document or sixty days after the denial of asylum, whichever is longer.

(2) If the application is denied by the Immigration Judge, the Board of Immigration Appeals, or upon judicial review of the asylum denial, the employment authorization terminates upon the expiration of the employment authorization document.

(c) In order for employment authorization to be renewed under this section, the alien must provide the Asylum Officer, or District Director where appropriate, with a Form I–765 and proof that he has continued to pursue his application for asylum before an Immigration Judge or sought administrative or judicial review. Pursuit of an application for asylum, for purposes of employment authorization is established by presenting to the Asylum Officer one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending before the Immigration Judge, and the alien wishes to pursue an application for asylum, a copy of the asylum denial and the Order to Show Cause (Form I–221/I–221S) or Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I–122) placing the alien in proceedings after asylum has been denied;

(2) If the immigration judge has denied asylum a copy of the Notice of Appeal (EOIR–26) date stamped by the Office of the Immigration Judge to show that a timely appeal has been filed from a denial of the asylum application by the Immigration Judge; or

(3) If the Board has dismissed the alien's appeal of the denial of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 106 of the Immigration and Nationality Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, applications for renewal must be received by the Service sixty days prior to expiration of the employment authorization.

(e) Upon the denied applicant's request, the District Director, in his discretion, may grant further employment authorization pursuant to 8 CFR 274a.12(c)(12).

§ 208.8 Limitations on travel outside the United States.

An applicant who leaves the United States pursuant to advance parole granted under 8 CFR 212.5(e) shall be presumed to have abandoned his application under this section if he returns to the country of claimed persecution unless he is able to establish compelling reasons for having assumed the risk of persecution in so returning.

§ 208.9 Interview and procedure.

(a) For each application for asylum or withholding of deportation within the jurisdiction of an Asylum Officer, an interview shall be conducted by that Officer, either at the time of application or at a later date to be determined by the Officer in consultation with the applicant. Applications within the jurisdiction of an Immigration Judge are to be adjudicated under the rules of procedure established by the Executive Office for Immigration Review in parts 3, 236, and 242 of this chapter.

(b) The Asylum Officer shall conduct the interview in a nonadversarial manner and, at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. The applicant may have counsel or a representative present and may submit affidavits of witnesses.

(c) The Asylum Officer shall have authority to administer oaths, present and receive evidence, and question the applicant and any witnesses, if necessary.

(d) Upon completion of the interview, the applicant or his representative shall have an opportunity to make a statement or comment on the evidence presented. The Asylum Officer, in his discretion, may limit the length of such comments or statement and may require their submission in writing.

(e) Following the interview the applicant may be given a period not to exceed 30 days to submit evidence in support of his application, unless, in the discretion of the Asylum Officer, a longer period is required.

(f) The application, all supporting information provided by the applicant, any comments submitted by the Bureau of Human Rights and Humanitarian Affairs of the Department of State, the Asylum Policy and Review Unit of the Department of Justice, or by the Service, and any other information considered by the Asylum Officer shall comprise the record.

§ 208.10 Failure to appear.

The unexcused failure of an applicant to appear for a scheduled interview may be presumed an abandonment of the application. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of Refugees, Asylum, and Parole by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the Asylum Officer determines that the applicant received reasonable notice of the interview. Such failure to appear may be excused for other serious reasons in the discretion of the Asylum Officer.

§ 208.11 Comments from the Bureau of Human Rights and Humanitarian Affairs.

(a) At its option, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State may comment on an application it receives pursuant to §§ 208.4(a), 236.3 or 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his country of nationality or habitual residence and his own experiences;

(2) An assessment of his likely treatment were he to return to his country of nationality or habitual residence;

(3) Information about whether persons who are similarly-situated to the applicant are persecuted in his country of nationality or habitual residence and the frequency of such persecution;

(4) Information about whether one of the grounds for denial specified in § 208.14 may apply; or

(5) Such other information or views as it deems relevant to deciding whether to grant or deny the application.

(b) In all cases, BHRHA shall respond within 45 days of receiving a completed application by either providing comments, requesting additional time in which to comment, or indicating that it does not wish to comment. If BHRHA requests additional time in which to provide comments, the Asylum Officer or Immigration Judge may grant BHRHA up to 30 additional days when necessary to gather information pertinent to the

application or may proceed without BHRHA's comments. Failure to receive BHRHA's response shall not preclude final decision by the Asylum Officer or Immigration Judge if at least 60 days have elapsed since mailing the completed application to BHRHA. If the Deputy Attorney General determines that an expedited decision is necessary or appropriate, BHRHA shall provide its comments immediately.

(c) Any Department of State comments provided under this section shall be made a part of the asylum record. Unless the comments are classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), the applicant shall be given a copy of such comments and be provided an opportunity to respond prior to the issuance of an adverse decision.

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding applications for asylum or withholding of deportation, the Asylum Officer may rely on material provided by the Department of State, the Asylum Policy and Review Unit, the Office of Refugees, Asylum, and Parole, the District Director having jurisdiction over the place of the applicant's residence or the port of entry from which the applicant seeks admission to the United States, or other credible sources, such as international organizations, private voluntary agencies, or academic institutions. Prior to the issuance of an adverse decision made in reliance upon such material, that material must be identified and the applicant must be provided with an opportunity to inspect, explain, and rebut the material, unless the material is classified under E.O. 12356.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 208.13 Establishing refugee status; burden of proof.

(a) The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) The applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he can establish that he has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but is determined not also to have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he may be granted asylum unless such a grant is barred by paragraph (c) of this section or § 208.14(c).

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he can establish first, that he has a fear of persecution in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, second, that there is a reasonable possibility of actually suffering such persecution if he were to return to that country, and third, that he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

(i) In evaluating whether the applicant has sustained his burden of proving that he has a well-founded fear of persecution, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for persecution if:

(A) He establishes that there is a pattern or practice in his country of nationality or last habitual residence of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) He establishes his own inclusion in and identification with such group of persons such that his fear of persecution upon return is reasonable.

(ii) The Asylum Officer or Immigration Judge shall give due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(c) An applicant shall not qualify as a refugee if he ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence indicates that the applicant engaged in such conduct, he shall have the burden of proving by a preponderance of the evidence that he did not so act.

§ 208.14 Approval or denial of application.

(a) An Immigration Judge or Asylum Officer may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act unless otherwise prohibited by paragraph (c) of this section.

(b) If the evidence indicates that one or more of the grounds for denial of asylum enumerated in paragraph (c) of this section may apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(c) *Mandatory denials.* An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(2) The applicant has been firmly resettled within the meaning of § 208.15; or

(3) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he establishes:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and

that he did not establish significant ties in that nation; or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry and/or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* If the Asylum Officer denies an alien's application for asylum, he shall also decide whether the alien is entitled to withholding of deportation under section 243(h) of the Act. If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated and deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an Immigration Judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

(b) *Eligibility for withholding of deportation; burden of proof.* The burden of proof is on the applicant for withholding of deportation to establish that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his life or freedom was threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for such persecution if:

(i) He establishes that there is a pattern or practice in the country of proposed deportation of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) He establishes his own inclusion in and identification with such group of persons such that it is more likely than not that his life or freedom would be threatened upon return.

(4) In addition, the Asylum Officer or Immigration Judge shall give due consideration to evidence that the life or freedom of nationals or residents of the country of claimed persecution is threatened if they leave the country without authorization or seek asylum in another country.

(c) *Approval or denial of application.* The following standards shall govern approval or denial of applications for withholding of deportation:

(1) Subject to paragraph (c)(2) of this section, an application for withholding of deportation to a country of proposed deportation shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) An application for withholding of deportation shall be denied if:

(i) The alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) There are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or

(iv) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(3) If the evidence indicates that one or more of the grounds for denial of withholding of deportation enumerated in paragraph (c)(2) of this section apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(4) In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him, the denial of asylum shall be reconsidered. Factors to be so considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his spouse or minor children in a third country.

§ 208.17 Decision.

The decision of an Asylum Officer to grant or deny asylum or withholding of deportation shall be communicated in writing to the applicant, the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which he sought admission to the United States, the Assistant Commissioner, Refugees, Asylum, and Parole, and the Director of the Asylum Policy and Review Unit of the Department of Justice. An adverse decision will state why asylum or withholding of deportation was denied and will contain an assessment of the applicant's credibility.

§ 208.18 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugees, Asylum, and Parole, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases he shall designate. The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of Refugees, Asylum, and Parole, to the Office of the Deputy Attorney General, or to the Asylum Policy and Review Unit, and parties shall have no right to

appear before such offices in the course of such review.

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an Asylum Officer. However, an application for asylum or withholding of deportation may be renewed before an Immigration Judge in exclusion or deportation proceedings. If exclusion or deportation proceedings have not been instituted against an applicant within 30 days of the Asylum Officer's final decision, the applicant may request in writing that the District Director having jurisdiction over the applicant's place of residence commence such proceedings. Absent exceptional circumstances, the District Director shall thereafter promptly institute proceedings against the applicant.

(c) A denial of asylum or withholding of deportation may only be reviewed by the Board of Immigration Appeals in conjunction with an appeal taken under 8 CFR part 3.

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.17 where applicable.

(b) A motion to reopen or reconsider shall be filed:

(1) With the District Director having jurisdiction over the location at which the prior determination was made who shall forward the motion immediately to an Asylum Officer; or

(2) With the Office of the Immigration Judge having jurisdiction over the prior proceeding.

§ 208.20 Approval and employment authorization.

When an alien's application for asylum is granted, he is granted asylum status for an indefinite period. Employment authorization is automatically granted or continued for persons granted asylum or withholding of deportation unless the alien is detained pending removal to a third country. Appropriate documentation showing employment authorization shall be provided by the INS.

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act, may also be granted asylum if accompanying or following to join the principal alien, unless it is determined that:

(1) The spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion;

(2) The spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States; or

(3) There are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship.* The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I–730 with the District Director having jurisdiction over his place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the principal alien may request asylum for the spouse or child by filing form I–730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice explaining the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c)(2) and (c)(3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

§ 208.22 Effect on deportation proceedings.

(a) An alien who has been granted asylum may not be excluded or deported unless his asylum status is revoked pursuant to § 208.24. An alien in exclusion or deportation proceedings who is granted withholding of deportation may not be deported to the country as to which his deportation is ordered withheld unless withholding of deportation is revoked pursuant to § 208.24.

(b) When an alien's asylum status or withholding of deportation is revoked under this chapter, he shall be placed in exclusion or deportation proceedings. Exclusion or deportation proceedings may be conducted concurrently with a revocation hearing scheduled under § 208.24.

§ 208.23 Restoration of status.

An alien who was maintaining his nonimmigrant status at the time of filing an application for asylum or withholding of deportation may continue or be restored to that status, if it has not expired, notwithstanding the denial of asylum or withholding of deportation.

§ 208.24 Revocation of asylum or withholding of deportation.

(a) *Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following a hearing before an Asylum Officer, the grant to an alien of asylum made under the jurisdiction of an Asylum Officer may be revoked if, by a preponderance of the evidence, the Service establishes that:

(1) The alien no longer has a well-founded fear of persecution upon return due to a change of conditions in the alien's country of nationality or habitual residence;

(2) There is a showing of fraud in the alien's application such that he was not eligible for asylum at the time it was granted; or

(3) The alien has committed any act that would have been grounds for denial of asylum under § 208.14(c).

(b) *Revocation of withholding of deportation by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner, and following a hearing before an Asylum Officer, the

grant to an alien of withholding of deportation made under the jurisdiction of an Asylum Officer may be revoked if, by clear and convincing evidence, the Service establishes that:

(1) The alien is no longer entitled to withholding of deportation due to a change of conditions in the country to which deportation was withheld;

(2) There is a showing of fraud in the alien's application such that he was not eligible for withholding of deportation at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of deportation under § 208.16(c)(2).

(c) *Notice to applicant.* Upon motion by the Assistant Commissioner to revoke asylum status or withholding of deportation, the alien shall be given notice of intent to revoke, with the reason therefore, at least thirty days before the hearing by the Asylum Officer. The alien shall be provided the opportunity to present evidence tending to show that he is still eligible for asylum or withholding of deportation. If the Asylum Officer determines that the alien is no longer eligible for asylum or withholding of deportation, the alien shall be given written notice that asylum status or withholding of deportation along with employment authorization are revoked.

(d) *Revocation of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal.

(e) *Reassertion of asylum claim.* A revocation of asylum or withholding of deportation pursuant to paragraphs (a) or (b) of this section shall not preclude an applicant from reasserting an asylum or withholding of deportation claim in any subsequent exclusion or deportation proceeding.

(f) *Review.* The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions to revoke asylum or withholding of deportation, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of the Deputy Attorney General or to the Asylum Policy and Review Unit and parties shall have no right to appear before such offices in the course of such review.

(g) *Revocation of asylum or withholding of deportation by the Executive Office for Immigration Review.* An Immigration Judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 242.22 of this chapter for the purpose of revoking a grant of asylum or withholding of deportation made under the exclusive jurisdiction of an Immigration Judge. In such a reopened proceeding, the Service must similarly establish by the appropriate standard of evidence one or more of the grounds set forth in paragraphs (a) or (b) of this section. Any revocation under this paragraph may occur in conjunction with an exclusion or deportation proceeding.

PART 236—[AMENDED]

7. The authority citation for part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

8. In Part 236, Exclusion of Aliens, § 236.3 is revised to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) If an alien expresses fear of persecution or harm upon return to his country of origin or to a country to which he may be deported after exclusion from the United States pursuant to part 237 of this chapter, the Immigration Judge shall:

(1) Advise the alien that he may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(b) of this chapter. Upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs of the Department of State for their comments pursuant to § 208.11 of this chapter, and shall calendar the case for hearing, which shall be deferred pending receipt of the Department of State's comments. The reply, if any, from the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given to both the applicant and to the Trial Attorney representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the Immigration Judge pursuant to the requirements and standards established in part 208 of this chapter after an evidentiary hearing that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to 8 CFR 208.14 or 208.16 is not necessary once the Immigration Judge has determined that such a denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to 8 CFR 236.2.

(2) Nothing in this section is intended to limit the authority of the Immigration Judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses on his own behalf. The applicant has the burden of establishing that he is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(4) The Trial Attorney for the government may call witnesses and present evidence for the record, including information classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), provided the Immigration Judge or the Board has determined that such information is relevant to the hearing. When the Immigration Judge receives such classified information he shall inform the applicant. The agency that provides the classified information to the Immigration Judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an Immigration Judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Trial Attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

PART 242—[AMENDED]

9. The authority citation of part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254, 1362.

10. In Part 242, Proceedings To Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal, § 242.17(c), is revised to read as follows:

§ 242.17(c) Ancillary matters, applications.

* * * * *

(c) *Applications for asylum or withholding of deportation.* (1) The Immigration Judge shall notify the respondent that if he is finally ordered deported his deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him an opportunity then and there to make such designation. The Immigration Judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his designation will not accept him into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which he might be deported pursuant to paragraph (c)(1) of this section, the Immigration Judge shall:

(i) Advise the alien that he may apply for asylum in the United States or withholding of deportation to those countries; and

(ii) Make available the appropriate application forms.

(3) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(b) of this chapter. Upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs of the Department of State for their comments pursuant to § 208.11 of this chapter, and shall calendar the case for hearing, which shall be deferred pending receipt of the Department of State's comments. The reply, if any, of the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given to both the applicant and to the Trial Attorney representing the government.

(4) Applications for asylum or withholding of deportation so filed will be decided by the Immigration Judge pursuant to the requirements and standards established in part 208 of this chapter after an evidentiary hearing that is necessary to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to 8 CFR 208.14 or 208.16 is not necessary once the Immigration Judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of deportation will be open to the public unless the applicant expressly requests that it be closed.

(ii) Nothing in this section is intended to limit the authority of the Immigration Judge properly to control the scope of any evidentiary hearing.

(iii) During the deportation hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses in his own behalf. The applicant has the burden of establishing that he is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(iv) The Trial Attorney for the government may call witnesses and present evidence for the record, including information classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), provided the Immigration Judge or the Board has determined that such information is relevant to the hearing. When the Immigration Judge receives such classified information he shall inform the applicant. The agency that provides the classified information to the Immigration Judge may provide an unclassified summary of the information for release to the applicant, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(5) The decision of an Immigration Judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Trial Attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

* * * * *

PART 253—[AMENDED]

11. The authority citation for part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285.

12. In Part 253, Parole of Alien Crewman, § 253.1(f) is revised to read as follows:

§ 253.1 Parole.

* * * * *

(f) *Crewman, stowaway, or alien temporarily excluded under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act who alleges that he cannot return to his country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of deportation under part 208 of this chapter.

(1) If the alien is on a vessel or other conveyance and makes such fear known to an immigration inspector or other official making an examination on the conveyance, he shall be promptly removed from the conveyance. If the alien makes his fear known to an official while off such conveyance, he shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

(2) In either case, the alien shall be provided the appropriate application forms and such other information as is required by § 208.5 of this chapter and may then have ten (10) days within which to file an application for such relief with the District Director having jurisdiction over the port of entry from which the applicant seeks entry into the United States. The District Director, pursuant to § 208.4(a) of this chapter, shall immediately forward any such application to an Asylum Officer with jurisdiction over his district.

(3) Pending adjudication of the application by the Asylum Officer, the applicant may be detained by the Service, or paroled into the custody of the ship's agent or otherwise paroled in accordance with § 212.5 of this chapter and shall not be excluded or deported before a decision is rendered by the Asylum Officer on his asylum application.

(4) A decision denying asylum to an alien crewman or stowaway, but not an alien temporarily excluded under section 235(c) of this chapter, may be appealed directly to the Board of Immigration Appeals. Such appeal must be filed within ten (10) days of the Asylum Officer's decision by filing a notice of appeal on Form I–290A with the District Director, who shall immediately forward the notice to the Asylum Officer. The Asylum Officer shall transmit the notice of appeal, his decision, and the record on which that decision was based, to the Board of Immigration Appeals. The filing of a notice of appeal shall stay the exclusion or deportation of the applicant pending decision on the appeal by the Board.

* * * * *

Dated: July 18, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-17453 Filed 7-26-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 90-129]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by (1) removing Indiana from the list of States that permit the feeding of treated garbage to swine and adding it to the list of States that prohibit garbage feeding, (2) removing Maryland from the list of States that prohibit garbage feeding and adding it to the list of States that permit the feeding of treated garbage to swine, and (3) removing Alaska from the list of States that issue garbage treating licenses under cooperative agreements with the Animal and Plant Health Inspection Service, United States Department of Agriculture. These actions reflect changes in the status of these States, and thereby facilitate the administration of the Swine Health Protection regulations.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 736, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

On April 23, 1990, we published in the Federal Register (55 FR 15236-15237, Docket Number 89-122), a document proposing to (1) remove Indiana from the list of States in § 166.15(b) that permit the feeding of treated garbage to swine and add it to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine; (2) remove Maryland from the list of States in § 166.15(a) that prohibit the feeding of garbage to swine and add it to the list of States in § 166.15(b) that permit the feeding of treated garbage to swine; and (3) remove Alaska from the list in § 166.15(d) of States that have cooperative agreements with APHIS. We also proposed to make nonsubstantive changes to the regulations in § 166.15(b) for the purposes of clarity.

Comments on the proposed rule were required to be received on or before June 22, 1990. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who permit the feeding of garbage to swine are considered small entities.

Indiana has no licensed garbage feeders; therefore, prohibiting the feeding of garbage to swine in Indiana will have no economic impact there. This rule reflects changes that Indiana has already made with respect to Swine Health Protection.

Maryland has one licensed garbage feeder, and Alaska has two. Changing the status of Maryland and Alaska will have no effect on the business operations of these entities; this rule reflects changes that Maryland and Alaska have already made with respect to swine health protection. Therefore, it is not anticipated that the licensed garbage feeders operating in Maryland and Alaska will experience any economic impact as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR part 166 is amended as follows:

1 The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (a) of § 166.15 is amended by adding "Indiana," immediately after "Illinois," and by removing "Maryland".

3. Paragraph (b) of § 166.15 is amended by correcting the spelling of "Main" to "Maine"; by adding "Maryland," immediately after "Maine"; and by removing "Indiana".

4. Paragraph (d) of § 166.15 is amended by removing "Alaska,".

Done in Washington, DC, this 23rd day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-17539 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-34-M